

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OFFICE OF THE ZONING ADMINISTRATOR**



November 9, 2012

Mr. Steven E. Sher, Director  
of Zoning and Land Use Services  
Holland & Knight LLP  
800 17<sup>th</sup> Street, NW - Suite 1100  
Washington, DC 20006

Re: Zoning Commission Case No. 06-10 Art Place PUD - Building A

Dear Mr. Sher:

This is to confirm the substance of our discussion on September 19, 2012, with Mark Pirone of C2C Inc., and review of additional information you submitted to me concerning the above referenced property. The property is the subject of a planned unit development (PUD) and zoning map amendment approved by the Zoning Commission pursuant to Order No. 06-10, dated December 14, 2009, and effective January 15, 2010. The Order granted consolidated approval to Building A and first-stage approval to the remainder of the project, including Buildings B, C and D. Building A was approved with a maximum total gross floor area of 804,880 square feet, with a mix of uses to include a grocery store, other retail, apartments and other related uses. By Order No. 06-10A, dated October 17, 2011, effective January 20, 2011, the Commission approved a modification to the PUD to allow the grocery store to be constructed as part of Building B and to allow the grocery store space in Building A to be occupied by other retail and service uses.

The approved project will replace a series of 1950s era garden apartments. The approved project also includes the closing and abandonment of existing streets and alleys and the construction and dedication of new streets.

Condition No. 24 of the Order provides that the consolidated PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of the Order, and that within such time an application must be filed for a building permit as specified in 11 DCMR § 2409.1. The condition further provides that construction must begin within three years of the effective date of the Order, which is by January 15, 2013, in this instance.

In my letter, dated September 19, 2011, to you concerning this project, I concluded that "if you file an application for a foundation to grade permit with the necessary supporting plans and documentation and pay the required fee by January 15, 2012, you will have met the

requirements of the Regulations to vest the Zoning Commission's approval as set forth in Order No. 06-10." You advised that, on November 18, 2011, an application for a foundation permit, No. FD1200017, was filed with the Department of Consumer and Regulatory Affairs (DCRA) and that the filing fee for the permit was paid on that date. The application included documentation indicating that the existing buildings on the site were to be demolished and included an excavation, sheeting and shoring component. You have therefore met the requirement under §2409.1 to file for the permit within two years.

You advised that, in addition to preparing the plans for the foundation permit and filing the application therefore, the Applicant has taken a number of other steps to move forward with the development, including:

1. Recorded the PUD Covenant in the Land Records, as evidenced by document number 2012005091 recorded in the D.C. land records on January 12, 2012.
2. Completed the D.C. agency and legislative process to close existing streets and alleys and to dedicate land for street and alley purposes, as evidenced by the adoption of D.C. Law No.18-247, which became effective on October 26, 2010.
3. Filed for and received Building Permit No. SB1200370, issued on June 27, 2012, which authorized soil borings.
4. Filed updated plan sheets for the foundation permit set on May 14, 2012.
5. Undertook utility relocation on the property, including electric lines by Pepco and telephone lines by Verizon.
6. Scheduled further utility work with Washington Gas, for which the Gas Company is in the process of obtaining permits to accomplish the work.
7. Prepared a Request for Proposals for Construction Services for the construction of the new Ingraham Street, with the anticipation that the actual street construction will start on or around December 2, 2012.
8. Filed for and received Public Space Occupancy/Parking Permit No. PA10050946, issued March 12, 2012, for the erection of a "Construction Staging Area" for the project.
9. Filed for and received multiple demolition permits (R1200086, R1200087, R1200088, R1200089 and R1200090).
10. Completed demolition of the buildings at 5130 4<sup>th</sup> Street, 5120 4<sup>th</sup> Street, 5121 4<sup>th</sup> Street 410 Galloway Street and 411 Hamilton Street, as shown on Sheet C-2 of the foundation permit set dated July 2, 2012.

The plans that were filed under permit #FD120017 were accepted and were sufficiently complete to meet the requirements for review under the codes and regulations of the District of Columbia.

Within a few days, on or around November 21, 2011, the plans were submitted to the Department of the Environment and to DC Water and Sewer for review by those agencies. The plans have been under review by DDOE and DCWASA since that time. You advised that approval is expected from those agencies within approximately thirty days. Review of the plans on an ongoing basis is being monitored by Cris Flack of Flack Ventures.

Somewhere around the middle of February, 2012, a notation was placed in the permit review records by Robert Chen that the plans had been withdrawn. That notation was to indicate that the design professionals were in the process of making certain changes to the plans and that it was not desired to have DCRA or other related agencies spend the time reviewing plans that were going to change. The permit application itself was never withdrawn and the plans remained at DDOE and DCWASA.

Part of the change to the foundation design was to include the option of a caisson system and auger cast piles. The plans were amended in part to add this so that we could build either system depending on the ultimate cost.

The revisions were completed and the updated plans were submitted to DCRA on July 26, 2012. The plans were filed through Tay Garnett of the Development Ambassador Program. Those plans were filed under the same permit application number as the first submission. While certain elements of the plans for the below grade structure were changed, the essential nature of the development as approved by the Zoning Commission did not change.

You also indicated that the Applicant is expecting comments from DCRA on the pending foundation permit application shortly and will move directly to respond to those comments such that the District can issue the foundation permit. You advised that the excavation, sheeting and shoring aspects of the permit may be moved ahead of the actual foundation approval. You committed that the Applicant is continuing to diligently pursue issuance of the pending permit.

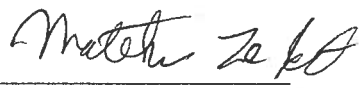
Therefore, based upon the actions taken to date as outlined in this letter, I hereby confirm that the actions undertaken by the Applicant as to what is being reviewed now by DCRA are a logical continuation without interruption of what was filed in November, 2011. I further confirm that the Applicant has begun construction of the consolidated portion of the PUD approved for Building A in accordance with the timeframes set forth in Condition No. 24 of Zoning Commission Order No. 06-10 and Section 2408.9 of the Zoning Regulations. The Applicant has therefore vested its right to continue construction and complete the PUD for Building A. This

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ruling does not apply to the PUD as it relates to Buildings B, C and D, since the Zoning Commission has yet to grant second stage approval for those portions of the PUD.

Please let me know if you have any further questions.

Sincerely,   
Matthew Le Grant  
Zoning Administrator